IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 4353 OF 1991

Dr. Rajaram Bhagwanrao Pawar,
Age 39 years, Occ. Advocate,
R/o. Killedarwada,
At and Post and Taluka Mangalwedha,
District : Solapur. ... Petitioner

Versus

1. Shikshan Prasarak Mandal
Mangalwedha, District Solapur,
(Notice to be served on President),

2. The Principal,
Science College, Mangalwedha,
District Solapur.

3. Shivaji University,
Kolhapur,
(Notice to be served on the
Vice Chancellor, Kolhapur)

4. The State of Maharashtra,
(Notice tobe served on the
A.G.P.) Bombay.

5. Nilkanth Dinkar Navagire,
Gobe Plot, Behind Ujani Colony,
Mangalwedha, Taluka Mangalwedha,
District Solapur.

i) Dr. Subhash Dnyandeo Kadam,
Aged 43 years, Occ. service,
President Shikshan Prasarak Mandal,
Mangalwedha, Dist. Solapur.

ii) Shri. Suresh D. Patil,
aged 30 years, Occ. Service,
D.M.K.G. Science College,
Mangalwedha, Solapur. ... Respondents

Mr. S.S. Patwardhan for Petitioner.

Mr. D.K. Ghaisas for Respondent Nos. 1 and 2.

Mr. R.G. Ketkar for Respondent No. 3.

Mr. Y.D. Mulani, A.G.P. for Respondent No. 4.

ALONG WITH

WRIT PETITION NO. 3713 OF 1993

Nilkanth Dinkar Navagire,
Age 28 years, Occ. Service,
residing at Gobe Plot,
Behind Ujani Colony,
Mangalwedha, Taluka Mangalwedha,
District. Solapur. .. Petitioner

Versus

1. The Shikshan Prasarak
Mandal, a society registered
under the Societies Registration
Act, At and Post Mangalwedha,
District Solapur.

2. The Principal,
Dalit Mitra Kadam Guruji Science
College, An Institute run by the
first respondent.

3. The Shivaji University.
Vidyanagar, Kolhapur,
District Kolhapur 416 004.
(Notice to be served on the
Vice Chancellor of Shivaji
University, Kolhapur.)

4. Dr. Rajaram Bhagwanrao Pawar,
R/o. Killedarwada,
At and Post and Taluka Mangalwedha,
District Solapur. ... Respondents

Mr. D.K. Ghaisas for Petitioner.

Mr. R.G. Ketkar for Respondent No. 3.

CORAM : F.I. REBELLO &
DR. D.Y. CHANDRACHUD,JJ.
DATED : 6TH SEPTEMBER, 2005

P.C.

. Both the Petitions can be disposed of by a

common order as issue which arise are the same.

. In Writ Petition No. 4353 of 1991, the Petitioner has impugned the selection of Respondent No. 5 to the post of Lecturer in Botany by the then Shivaji University and presently Solapur University. The respondent No. 1 Institute, issued an advertisement on 3.5.1991 for selection and appointment to the post of Full Time Lecturer to Respondent No. 2 college. One of the post was botany and was to be filled in by a candidate from the open category against clear vacancy. The Petitioner is holder of B.Sc degree in botany with 66.2% marks, M.Sc. degree from Shivaji University in botany with 60.5% marks and was conferred a doctorate in botany in the year 1982. The Petitioner also has averred that he has 13 years of experience in teaching botany. Apart from the Petitioner, another 4/5 applications were also received. The selection, committee selected Respondent No. 5. The college forwarded the name of Respondent No. 5 the selected candidate for approval to respondent No. 3. It is the case of the Petitioner that he represented against selection of respondent No. 5 on the ground that the selection of Respondent No. 5 is contrary to rules of the University. In the representation addressed to the Vice Chancellor of the University, the Petitioner has set out that Respondent No. 5

was the holder of B.Sc. degree from Shivaji University with 58% marks and M.Sc. of University of Poona with 65% marks. It is the case of the Petitioner, therefore, that in terms of the existing Government Resolution, Respondent No. 5 was not qualified. In the advertisement, which was issued, it was set out that the educational qualifications, service conditions, pay scales and other allowances will be as per Government rules.

2. Respondent No. 5 has not filed any reply to this petition but has independently filed another petition of which facts will be adverted to subsequently. A reply has, however, been filed by the President of Respondent No. 1 Smt. M.S. Kadam. It is pointed out that in the month of June, 1989, one reserved part time post for botany was vacant in respondent No. 2 college. As reserved category candidate was not available, Respondent No. 5 (wrongly stated as Respondent No. 7) was appointed upto 22.4.1990. Respondent No. 5 was thereafter reappointed as part time Lecturer on the said post from 9.7.1990 upto 30.7.1990. Respondent No. 5 thereafter was appointed on the same post of full time Lecturer upto the end of April, 1991 and the appointment was also approved by the University. It is then pointed out that in

the academic year 1990-91, the reserved post for botany was dereserved and became open. Respondent No. 1 institute consequently published an advertisement and invited applications for the said post on 3.5.1991. Various applications were received and Respondent No. 5 was selected.

3. Writ Petition No. 3713 of 1993 has been filed by Respondent No. 5 in Writ Petition NO. 4353 of 1991. It is the case of the Petitioner that he is holder of M.Sc. First Class in Botany from the University of Pune having secured degree in the year 1988. It is pointed out that from 14.1.1989 he came to be appointed as Lecturer in Botany in the reserved post on the part time basis. The subsequent appointments made by the college thereafter has been set out. On the post being advertised, the Petitioner was selected by the University committee. As Writ petition No. 4383 of 1991 filed by Respondent No. 4 was admitted and pending, Petitioner is not being paid any salary and on enquiry with college principal, he was informed that he was not being paid salary because of the pendency of Writ Petition No. 4353 of 1991 and as such no appointment order was issued. As the Petitioner was not added in Writ Petition No. 4353 of 1991, he moved an application therein which

came to be allowed and petitioner was added as respondent. The society running the college thereafter issued another advertisement on 10.1.1993 inviting applications for one full time Lecturer for Botany in the open category. The Petitioner applied for the said post and appeared for the interview held by the University Committee. According to Petitioner, as per his information he was selected for the said post of Lecturer from amongst 5 candidates who appeared for the interview. The respondent college communicated the name of the selected candidate including Petitioner to the University for approval. The University however, communicated by letter dated 12.8.1993 to the college that the petitioner's selection cannot be approved since the matter was pending in the court of law. On failure by respondent to issue letter of appointment, petitioner filed Writ Petition No. 3713 of 1993. A reply has been field in that Petition by the contesting respondent, respondent No. 4. It is the case of the Respondent No. 4 that the selection is on merits and as per prescribed qualification. It is the case of the Respondent NO. 4 that Respondent No. 4 held requisite qualification but the petitioner does not possess the requisite qualification. Inspite of that Respondent No. 4 was not selected

and it is the Petitioner who has been selected.

. Reply was filed on behalf of University by Mr. Mahadev Balu Nalavade, Assistant Superintendent (Affiliation Section) of the 3rd Respondent, the Shivaji University. It is set out that in the appointment to the post of Lecturer in the college, the U.G.C has proscribed the following qualification for recruitment :

(a) Academic record with atleast 2nd class (C in the Seven Point Scale) Master's Degree in relevant subject from an Indian University or equivalent degree from a Foreign University; and

(b) M. Phil Degree or a recognised degree beyond the Master's level or published work indicating the capacity of a candidate for independent research work.

. It is pointed out that notwithstanding that the Petitioner did not possess either M. Phil or Ph.D. which is prescribed, the selection committee recommended name of the Petitioner for appointment to the said post. It is pointed out that the matter was placed before the Vice Chancellor who

noted that a qualified and experienced Candidate has been rejected and a Candidate who does not fulfil the U.G.C. Norms has been recommended for appointment. In these circumstances, Vice Chancellor ordered to readvertise the post. Accordingly letter was sent to second respondent on 7.9.1991. It is also set out that though university did not grant approval to the appointment of the Petitioner, respondent continued petitioner. A fresh advertisement was issued on 10.6.1993. The interview committee once again selected the petitioner. The matter was placed before the University and after due deliberation, the Vice Chancellor noted that the approval cannot be granted.

4. From the pleadings the question which arises is whether the petitioner in Writ Petition No. 3713 of 1993 was duly qualified for appointment to the post of Lecturer.

. A copy of G.R. dated 8.1.1991 has been handed over at the bar. In terms of the said G.R. appointment to the post of College Lecturer is as under :

"(a) An M. Phil degree or a recognised degree

beyond the Master's level or published work indicating capacity of a candidate for independent research work; and

(b) Good academic record with atleast second class l(C in the seven point scale) Master's degree in a relevant subject from an Indian University or equivalent degree from a foreign University.

. Provided that if the selection committee is of the view that the research work of a candidate as evident either from his thesis or from his published work is of a very high standard it may relax any of the qualifications prescribed in (b) above. "

. In Para 4 of the G.R. it is noted that the State Government, after examining the above issue in the light of University Grants Commission's directions on this subject, have decided to adopt and give the same treatment regarding recruitment and qualification for appointment to the post of Lecturer.

. It will therefore, be apparent in so far as Petitioner in Writ Petition No. 3713 of 1993 neither possessed the requisite degree or

recognised degree beyond Master's level. On the contrary Petitioner in Writ :Petition No. 4353 of 1991 holds Master's degree in the relevant subject. Once that be the case, the selection of Petitioner in Writ Petition No. 3713 of 1993 and Respondent No. 5 in Writ Petition No. 4353 of 1991 by the selection committee was totally arbitrary in as much as he was not eligible for consideration. The university therefore was right in refusing to grant approval to the appointment of Respondent No. 5 in Writ Petition No. 4353 of 1991 and Petitioner in Writ Petition No. 3713 of 1993. Petitioner in Writ Petition No. 4353 of 1991 has sought mandamus that the respondent Nos. 1 and 2 be directed to select and appoint Petitioner as Lecturer in the Science College, Mangalwedha as per advertisement at Exh. A to the petition. It was not only Petitioner who had applied but also there were other candidates. Apart from that nearly 14 years have passed since selection. Therefore, in these circumstances, it will not be possible for this court to issue mandamus in favour of the Petitioner in Writ Petition No. 4353 of 1991 merely because the court has come to the conclusion that Respondent No. 5 in that petition was ineligible for consideration. The process of selection will have to be started denovo. To that extent that

petition can be partly allowed.

5. In so far as Writ Petition No. 3713 of 1993 the University has rightly refused to grant approval to appointment of the Petitioner as the Petitioner did not posses the minimum requirement.

. It was alleged by the counsel on behalf of the Petitioner in Writ Petition No. 3713 of 1993 that the Petitioner was employed as part time Lecturer and in view of various G.R.s issued by the State Government is entitled to be regularised. In the first instance, we have noticed that the said appointment was against the reserved post for particular period. As such that by itself could not have given right to the Petitioner in Writ Petition No. 3713 of 1993 for being selected. At any rate, it will be for the Petitioner in Writ Petition No. 3713 of 1993 if he has legal right to move the University and it is for the university to consider such representation according to Law.

. With above observation, rule in both the petitions discharged. No order as to costs.

. Civil Application No.1424 of 2002 in Writ Petition No. 3713 of 1993 is an application for

early hearing. In view of the petition being heard and finally disposed of, civil application has become infructuous. Hence, civil application dismissed as infructuous.

(F.I. REBELLO,J.)

(DR. D.Y. CHANDRACHUD,J.)